

February 14, 1955

Dr. Austin J. McCaffrey, Commissioner
State Department of Education
State House Annex
Concord, New Hampshire

SEP 22 1998

CONCORD, N.H.

Dear Sir:

You have requested an opinion from this office as to whether a school board may contract for the transportation of and payment of tuition of pupils for periods in excess of one year.

I do not believe that this question has been decided by our courts, and therefore my answer must be general in nature and based upon the general law of contracts as it relates to public officers.

Both transportation and tuition of pupils are required under certain circumstances by our statutes. R.L., c. 135, ss. 6 & 7 and R.L., c. 138, ss. 21 through 27. For this reason I believe that a school board may contract for periods in excess of one year. However, any attempt to bind the district by a school board for periods of longer than one year is to attempt to contract on the credit of the district. In most instances, there must be an appropriation to cover the contract. For this reason, if the board feels that contracts for periods in excess of one year are advisable, advance authority should be secured from the district at its annual meeting.

For the purposes of guidance by the State Board of Education to the local school boards, it would seem advisable to indicate that contracts in excess of one year are not recommended unless prior approval is secured by means of a vote, and contracts in excess of three years are definitely out. The latter term is in my judgment the extreme limits based upon the assumption that no school board can see into the future and justify their guess that conditions will remain the same both as to the need for transportation, the cost, and the manner of providing it.

February 14, 1955

In some jurisdictions it has been held that contracts may be made only on money appropriated. R.R. School Tp. v. First State Bank, 126 N.E. 342, 73 Ind. App. 359; Union Graded School Dist. v. Ford, 37 P. 2d 258, 169 Okl. 410. There are two New Hampshire cases which have indicated this same type of restriction. Giles v. School Dist., 31 N.H. 304, in which the court said that a building committee could not incur debts on the credit of the district; and Wheeler v. School District, 66 N.H. 540, in which the court held that the school board could not hire a teacher by contract because they could contract only on the "credit of the school money of the district, and not on the credit of the district itself."

My reason for suggesting a vote of the district for contracts, for periods in excess of one year, is based on these cases and the fact that a contract for two years must necessarily be a contract on the "credit of the district itself." While I admit that under the circumstances these cases may not be controlling, I do believe they suggest a caveat which we should not ignore.

If I may be of any further assistance in this matter, please feel free to call on me at any time.

Very truly yours,

Arthur E. Bean, Jr.
Assistant Attorney General

AEB,Jr/aml